

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 761

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DePASCO.

Read 1st time January 19, 1998, and 1,000 copies ordered printed.

Read 2nd time January 27, 1998, and referred to the Committee on Elections, Pensions and Veterans' Affairs.

Reported from the Committee February 9, 1998, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 3, 1998. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

S3307.01P

AN ACT

To repeal section 169.322, RSMo 1994, and sections 169.324, 169.326 and 169.328, RSMo Supp. 1997, relating to certain school retirement systems, and to enact in lieu thereof four new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 169.322, RSMo 1994, and sections 169.324, 169.326 and 169.328, RSMo Supp. 1997, are repealed and four new sections enacted in lieu thereof, to be known as sections 169.322, 169.324, 169.326 and 169.328, to read as follows:

169.322. 1. Upon the written application of an active member or of the person's employer's board, any active member who has five or more years of creditable service shall be retired by the board of trustees on a disability retirement allowance, if the medical board after a medical examination of such member shall certify that such member is mentally or physically unable to perform such member's employment duties and that such incapacity is likely to be permanent. **Application for a disability retirement allowance may be made after the member ceases to be an active member, provided that the disability commenced while the member was an active member, and further provided that application is made no**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

later than six months after the disabled member ceases to be an employee of the employer. The first monthly payment of such disability retirement allowance shall not be made to such member so long as the member receives compensation from the member's employer.

2. Upon retirement for disability, a member shall receive a disability retirement allowance which shall be determined in the same manner as the service retirement allowance as set forth in section 169.324[; provided, the minimum disability retirement allowance shall be twenty-five percent of the person's average final compensation. The optional allowances provided in section 169.326 shall not be available to a member eligible for disability retirement allowance.], **but not less than the minimum disability retirement allowance provided in this section. The minimum disability retirement allowance shall be the lesser of:**

(a) Twenty-five percent of the person's average final compensation; or

(b) The member's service retirement allowance calculated based on the member's final average compensation and the maximum number of years of creditable service the member would have earned had the member remained an employee until attaining the age of sixty.

3. Once each year during the first five years following a member's retirement on a disability retirement allowance and once in every three-year period thereafter, the board of trustees may require any disability retiree who has not yet attained minimum normal retirement age to undergo a medical examination at a place designated by the medical board, such examination to be made by the medical board or by a physician or physicians designated by such board. Should any such disability retiree refuse to submit to such medical examination, the person's disability allowance may be discontinued until the person's withdrawal of such refusal, and should the person's refusal continue for one year all rights in and to the person's disability allowance shall be revoked by the board of trustees.

4. Should the board of trustees determine that any disability retiree **who has not yet attained minimum normal retirement age** is engaged in or is able to engage in a gainful occupation paying more than the difference between the person's monthly disability retirement allowance plus any social security benefits to which the person is eligible and the current rate of monthly compensation for the position the person held at retirement, then the amount of the person's disability retirement allowance shall be reduced to an amount which together with social security benefits and the amount earnable by the person shall equal such current rate of monthly compensation. Should the person's earning capacity be later changed, the amount of the person's disability retirement allowance may be further modified. The board of trustees may engage those persons, firms or corporations which it deems necessary to assist the board of trustees in making any determination under this subsection.

5. Should any member retired for disability be restored to active service as a regular employee, the member's disability retirement allowance shall cease and the member shall again

become a member of the retirement system, and contribute thereunder. Anything in sections 169.270 to 169.400 to the contrary notwithstanding, a disability retirant who has not attained the minimum normal retirement age at the date of again becoming a member shall have the person's creditable service at the time of the person's disability retirement restored, and the excess of the person's accumulated contributions at time of retirement over the total payments which the person received during retirement shall be credited to the person's account. Upon subsequent retirement, the person shall be entitled to a service retirement allowance to the extent the person meets the requisite qualifications, and the person's prior disability retirement allowance shall not be resumed. If a disability retirant has attained the minimum normal retirement age at the date of again becoming a member, the disability retirement allowance the person was receiving immediately prior to restoration of membership shall be resumed on subsequent retirement, together with such retirement allowances as shall accrue by reason of the person's latest period of membership. For the sole purpose of determining the person's eligibility for such additional retirement allowance, but not for determining the amount, all of the person's years of creditable service, whether before or after the person's period of disability, for which the person has made contributions which have not been withdrawn, shall be considered.

169.324. 1. The annual service retirement allowance payable pursuant to section 169.320 in equal monthly installments for life shall be the retirant's number of years of creditable service multiplied by one and three-fourths percent of the person's average final compensation, subject to a maximum of sixty percent of the person's average final compensation. Any member whose number of years of creditable service is greater than thirty-four and one-quarter on August 28, 1993, that provides for the foregoing formula for determining the annual service retirement allowance shall receive an annual service retirement allowance payable pursuant to section 169.320 in equal monthly installments for life equal to the retirant's number of years of creditable service as of August 28, 1993, multiplied by one and three-fourths percent of the person's average final compensation but shall not receive a greater annual service retirement allowance based on additional years of creditable service after August 28, 1993, that provides for the foregoing formula for determining the annual service retirement allowance. Provided, however, that, effective January 1, 1996, any retiree who retired on, before or after January 1, 1996, with at least twenty years of creditable service shall receive at least three hundred dollars each month as a retirement allowance, or the actuarial equivalent thereof if the retiree elected any of the options available under section 169.326. Provided, further, any retiree who retired with at least ten years of creditable service shall receive at least one hundred fifty dollars each month as a retirement allowance, plus fifteen dollars for each additional full year of creditable service greater than ten years but less than twenty years (or the actuarial equivalent thereof if the retiree elected any of the options available under section 169.326). Any beneficiary of a deceased retiree who retired with at least ten years of creditable service and elected one of the options available under section

169.326 shall also be entitled to the actuarial equivalent of the minimum benefit provided by this subsection, determined from the option chosen.

2. Except as otherwise provided in sections 169.580 and 169.585, a retirant may not receive a retirement allowance payment in any month for which such person receives remuneration from the person's employer for the performance of services except such person may serve as a nonregular substitute, part-time or temporary employee for not to exceed five hundred thirty hours in any school year without becoming a member and without having the person's retirement allowance discontinued.

3. The board of trustees shall determine annually whether the investment return on funds of the system can provide for an increase in benefits for [those retirants who, as of the date of any such increase, are at least age sixty-five and have been retired at least fourteen months.] **retirants eligible for such increase. A retirant will be eligible for an increase awarded under this section as of the fourth January following the date the retirant commenced receiving retirement benefits.** Any such increase shall also apply to any monthly joint and survivor retirement allowance payable to such retirant's beneficiaries, regardless of age. The board shall make such determination as follows:

(1) After determination by the actuary of the investment return for the preceding year as of December thirty-first (the "valuation year"), the actuary shall recommend to the board of trustees what portion of the investment return is available to provide such benefits increase, if any, and shall recommend the amount of such benefits increase, if any, to be implemented as of the first day of the thirteenth month following the end of the valuation year, and the first payable on or about the first day of the fourteenth month following the end of the valuation year. The actuary shall make such recommendations so as not to affect the financial soundness of the retirement system, recognizing the following safeguards:

(a) The retirement system's funded ratio as of January first of the year preceding the year of a proposed increase shall be at least one hundred percent after adjusting for the effect of the proposed increase. The funded ratio is the ratio of assets to the pension benefit obligation;

(b) The actuarially required contribution rate, after adjusting for the effect of the proposed increase, may not exceed the statutory contribution rate;

(c) The actuary shall certify to the board of trustees that the proposed increase will not impair the actuarial soundness of the retirement system;

(d) A benefit increase, under this section, once awarded, cannot be reduced in succeeding years;

(2) The board of trustees shall review the actuary's recommendation and report and shall, in their discretion, determine if any increase is prudent and, if so, shall determine the amount of increase to be awarded.

4. This section does not guarantee an annual increase to any retirant.

5. Notwithstanding anything contained in this section to the contrary, the amount of the annual service retirement allowance payable to any retirant pursuant to the provisions of sections 169.270 to 169.400, including any adjustments made pursuant to subsection 3 of this section, shall at all times comply with the provisions and limitations of section 415 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, the terms of which are specifically incorporated herein by reference.

6. All retirement systems established by the laws of the state of Missouri shall develop a procurement action plan for utilization of minority and women money managers, brokers and investment counselors. Such retirement systems shall report their progress annually to the joint committee on public employee retirement and the governor's minority advocacy commission.

169.326. 1. Until the first payment on account of any benefit becomes due, any retirant may elect, by delivering written notice duly acknowledged to the board of trustees, to receive the actuarial equivalent of the person's annual service retirement allowance **or disability retirement allowance** in the form of one of the options set forth below. No optional selection shall become effective in case a retirant dies within thirty days after retirement or within thirty days after filing such election; in such event the retirant shall be considered as an active member at the time of the retirant's death.

Option 1. Upon the person's death, the person's retirement allowance shall be continued throughout the life of and paid to such person as the person shall nominate by written designation duly acknowledged and delivered to the board of trustees at or prior to the time of the person's retirement, provided that in the event the person's designated beneficiary predeceases the person, then the person's retirement allowance shall be adjusted at that time to the amount determined pursuant to subsection 1 of section 169.324 at the time of the retirement of the person, or

Option 2. Upon the person's death, one-half of the person's retirement allowance shall be continued throughout the life of and paid to such person as the person shall nominate by written designation duly acknowledged and filed with the board of trustees at or prior to the time of the person's retirement, provided that in the event the person's designated beneficiary predeceases the person, then the person's retirement allowance shall be adjusted at that time to the amount determined under subsection 1 of section 169.324 at the time of the person's retirement, or

Option 3. Upon the person's death, no benefits shall be paid to any beneficiary or estate of the retired member. This optional benefit is actuarially increased over the benefit formula providing for benefits at death.

2. If the death of any member who has not elected an option occurs before the person has received total benefits at least as large as accumulated contributions at retirement, the difference shall be paid in one lump sum to the person's designated beneficiary, if living, otherwise to the estate of the retired member.

3. If an active member dies, or if an inactive member dies before retirement but after

becoming eligible to retire and commence receiving retirement benefits, and a dependent of the member (spouse, dependent child under age nineteen or dependent parent) is designated as primary beneficiary to receive the member's accumulated contributions, the beneficiary may, in lieu thereof, at the beneficiary's option, request that the benefit be paid under option 1 in subsection 1 of this section as if the member had retired as of the date of death and designated such beneficiary as the option 1 beneficiary; except that if the beneficiary is a dependent child, the option 1 benefit shall be payable only until the child attains age nineteen and not throughout the life of such child. If the designated beneficiary elects the option 1 benefit and if the member was an active member at the time of death, such benefit shall be calculated as if the deceased member had, at the time of death, at least ten years' creditable service. If more than one dependent is designated as beneficiary, the benefit shall be shared equally as determined by the actuary. The determination of the board of trustees as to whether a person is a dependent for the purpose of this subsection shall be final.

4. Notwithstanding anything contained in sections 169.270 to 169.400 to the contrary, the payment of the annual service retirement allowance, or the actuarial equivalent of the annual service retirement allowance payable under any option prescribed in this section, shall at all times comply with the distribution rules of section 401(a)(9) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, the terms of which are specifically incorporated herein by reference.

5. No person who would otherwise qualify as a dependent or beneficiary shall be eligible for, or entitled to, any benefits when such person is the principal or an accomplice in willfully bringing about the death of a member, retirant, or another dependent or beneficiary whose death would otherwise have resulted in payment of a benefit or a benefit increase to such person. The determination of the board of trustees that such person willfully brought about such death shall be made from a preponderance of the evidence presented and shall not be controlled by any contrary finding by any other forum, whether considered under the same or another degree of proof.

6. Any retirant or dependent or beneficiary who is entitled to or receiving benefits from the retirement system may, on a form prescribed by the board of trustees and filed with the board, irrevocably waive all or any portion of his or her retirement allowance or survivor benefit or any other benefit payable hereunder. Such waiver shall apply only to benefits that are payable on or after the date the waiver is filed. If a retirant files an irrevocable waiver in accordance with this subsection, the waiver shall apply only with respect to the retirant and shall not affect the rights of any dependents or other beneficiaries upon the retirant's death. If a dependent or beneficiary files an irrevocable waiver in accordance with this subsection, any benefits payable hereunder as a result of the death of a member or retirant shall be paid as if such dependent or beneficiary did not exist.

169.328. 1. Should a member cease to be a regular employee, except by retirement, the member, if living, shall be paid on demand, made by written notice to the board of trustees, the amount of the person's accumulated contributions (with interest as determined by the board of trustees as provided in sections 169.270 to 169.400) standing to the credit of the person's individual account in the employees contribution fund. The accumulated contributions with interest shall not be paid to a member so long as the person remains a regular employee. If the member dies before retirement such accumulated contributions (with interest) shall be paid to the member's estate or designated beneficiary unless the provisions of subsection 3 of section 169.326 apply.

2. If a former unvested member's accumulated contributions have not been withdrawn four years after the person has ceased to be a member (other than by reason of death or retirement), the board of trustees shall pay the same to such former member within a reasonable time after the expiration of such four-year period.

3. If, on account of undeliverability, improper mailing or forwarding address, or other similar problem, the board of trustees is unable to refund the accumulated contributions of a former **unvested** member or to commence payment of retirement benefits within four years after the end of the calendar year in which such former member ceased to be a regular employee, the board may transfer the accumulated contributions to the general reserve fund. If, thereafter, written application is made to the board of trustees for such refund or benefits, the board shall cause the same to be paid from the general reserve fund, but no interest shall be accrued after the end of the fourth year following the end of the calendar year in which such former member ceased to be a regular employee.

4. In its discretion the board of trustees may approve extensions of any time periods in this section on account of a former member's military or naval service, academic study or illness.